IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Plaintiff,

v.

UNITED STATES FOOD AND DRUG ADMINISTRATION,

Defendant.

No. 11-cv-

ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Natural Resources Defense Council (NRDC) asserts violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by defendant United States Food and Drug Administration (FDA), for failing to disclose responsive records concerning the synthetic chemical bisphenol A (BPA).

2. BPA is used in food packaging for a wide range of products, including canned vegetables, soda, and canned infant formula. BPA leaches from the packaging, contaminating the food of American consumers. A 2008 study by the Centers for Disease Control and Prevention found BPA in the urine samples of ninety-three percent of Americans tested. Scientific evidence links small doses of BPA to harmful health effects, including reproductive abnormalities, altered neurodevelopment, and cancer. FDA is charged with ensuring that substances added to food—such as BPA—do not harm human health. 21 U.S.C. § 348(a); 21 C.F.R. § 170.3(i); FDA Staff Manual Guide 1410.10(1)(A)(1).

3. This court has jurisdiction over this action, and venue is proper in this district, pursuant to 5 U.S.C. § 552(a)(4)(B), because Plaintiff NRDC has its principal place of business in this judicial district.

4. NRDC is a national, not-for-profit environmental and public health membership organization with more than 357,000 members nationwide. NRDC engages in research, advocacy, and litigation to improve the regulation of harmful substances in food, drugs, and consumer products.

5. Defendant FDA is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks in this action.

6. NRDC submitted a FOIA request to FDA on October 14, 2011 by fax and certified mail. Generally, NRDC's request seeks records since January 1, 2010 concerning the regulation of BPA in food packaging, the extent of human exposure to BPA through food packaging and the health effects of such exposure, and testing and research on BPA conducted or funded by FDA and other federal agencies collaborating with FDA. The request also seeks communications between FDA and the American Chemistry Council, governmental agencies, members of Congress or the public, and other outside entities regarding BPA.

7. FDA acknowledged receipt of NRDC's request by letter dated October 18, 2011. FDA granted NRDC a fee waiver for the production of records by letter dated October 19, 2011.

8. By a separate letter dated October 19, 2011, FDA provided NRDC with a small number of responsive documents and stated that a response to other portions of NRDC's request was forthcoming. The documents provided are from public docket number FDA-2010-N-0100, which was created by FDA to collect public comments on opinions that FDA was considering in its safety assessment of BPA. The provision of these records did not satisfy NRDC's FOIA

request, nor did it purport to provide NRDC with a final determination of NRDC's request that would be subject to administrative appeal.

9. Pursuant to the deadline established in 5 U.S.C. § 552(a)(6)(A)(i), FDA's response to NRDC's FOIA request was due on November 14, 2011. To date, FDA has failed to provide NRDC with a complete response to its request.

10. As a result of FDA's failure to comply with NRDC's request within the statutory time limit, NRDC is deemed to have exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

11. NRDC seeks a declaration that FDA has violated FOIA by failing to timely disclose responsive records and an injunction ordering FDA to provide those records.

12. NRDC brings this action on its own behalf and on behalf of its members. NRDC and its members have been and continue to be injured by FDA's failure to provide all responsive records. The requested relief will redress these injuries.

CLAIM FOR RELIEF

13. NRDC has a statutory right under FOIA for the records that it seeks, and there is no legal basis for FDA's failure to disclose them.

REQUEST FOR RELIEF

WHEREFORE, the plaintiff respectfully requests an Order:

(1) Declaring that the defendant's failure to disclose the records requested by the plaintiff in a timely fashion is unlawful;

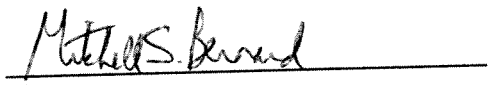
(2) Directing the defendant to disclose the requested records to the plaintiff forthwith and without further delay;

(3) Awarding the plaintiff its costs and attorneys' fees; and

(4) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 29, 2011

Respectfully submitted,



Mitchell S. Bernard (MB 5823)
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, NY 10011
(212) 727-2700
(212) 727-1773 (fax)
mbernard@nrdc.org

Nicholas Morales (NM 5434)
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, D.C. 20005-6166
(202) 717-8234
(202) 289-1060 (fax)
nmorales@nrdc.org

Counsel for Plaintiff